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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 142**

**Introduced by Assembly Member Bigelow**

(Principal coauthor: Senator Berryhill)

January 12, 2015

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An act to amend Section 5093.56 of, and to add Sections 5093.548 and 5093.549 to, the Public Resources Code, relating to wild and scenic rivers.

### LEGISLATIVE COUNSEL'S DIGEST

AB 142, as amended, Bigelow. Wild and scenic rivers: Mokelumne River.

(1) Existing law, the California Wild and Scenic Rivers Act, provides for a system of classification of those rivers or segments of rivers in the state that are designated as wild, scenic, or recreational rivers, for purposes of preserving the highest and most beneficial use of those rivers. The act requires the Secretary of the Natural Resources Agency to study and submit to the Governor and the Legislature a report that analyzes the suitability or unsuitability for addition to the system of rivers or segments of rivers that are designated by the Legislature as potential additions to the system, and requires that each report contain specified information and recommendations with respect to the proposed designation.

This bill would require the secretary, in a report analyzing the suitability or unsuitability of a proposed designation of the Mokelumne River, its tributaries, or ~~portions~~ *segments* thereof as additions to the system, to consider the potential effects of the proposed designation on future water requirements, as specified, and the effects of climate change on river values and current and projected water supplies, and to consider other factors. The bill would include any ~~portion~~ *segment* of the Mokelumne River designated for potential addition within certain protections afforded to wild and scenic rivers until the completion of the study period and the implementation of any recommendation to add the ~~portion~~ *segment* of the Mokelumne River to the system, or December 31, 2021, whichever occurs first.

The bill would also designate ~~a specified portion~~ *specified segments* of the Mokelumne River, ~~or any segment of that portion,~~ *River* for potential addition to the system. The bill would require the secretary to submit a report pursuant to the above-described requirements to the Legislature and Governor no later than December 31, 2017, and would require the report to include a clear recommendation on the suitability or unsuitability for addition to the system of *each of* the designated ~~portion segments~~ of the Mokelumne River ~~or any segment of that portion.~~ *River*. The bill would require the secretary to enter into a cost-sharing agreement with the Upper Mokelumne River Watershed Authority that would require the state and the authority to each pay a specified portion of the cost of the report. By imposing new duties on a local government entity, the bill would impose a state-mandated local program.

(2) The bill would declare that due to the unique geographical features of the Mokelumne River and its tributaries, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) It is the intent of the Legislature that the  
2 entities responsible for the Mokelumne Watershed Interregional  
3 Sustainability Evaluation Program may seek state funding for  
4 which the feasibility studies and assessments described in  
5 paragraph (3) of subdivision (a) of Section 5093.548 of the Public  
6 Resources Code are eligible.

7     (b) *It is further the intent of the Legislature that, until the*  
8 *completion of the study and report referenced in subdivision (c)*  
9 *of Section 5093.548 of the Public Resources Code and the*  
10 *implementation of any recommendation to add segments to the*  
11 *wild and scenic rivers system, or until December 31, 2021,*  
12 *whichever occurs first, state and local government entities may*  
13 *participate in any collaborative process convened by the Pacific*  
14 *Gas and Electric Company to discuss a pumped storage project*  
15 *in the upper Mokelumne River watershed, if the project is designed*  
16 *to avoid harm to the free-flowing condition and natural character*  
17 *of the segments of the river described in Section 5093.549 of the*  
18 *Public Resources Code, and to the recreational, cultural, historical,*  
19 *scenic, and water quality values of those segments.*

20     SEC. 2. Section 5093.548 is added to the Public Resources  
21 Code, to read:

22     5093.548. (a) Notwithstanding Section 5093.547, prior to the  
23 designation of the Mokelumne River, its tributaries, or ~~portions~~  
24 *segments* thereof as additions to the system, the secretary shall  
25 study and submit to the Governor and the Legislature a report that  
26 analyzes the suitability or unsuitability of the proposed  
27 designation. The suitability analysis contained in the report shall  
28 consider all of the following:

29     (1) The potential effects of the proposed designation on the  
30 ability of public agencies and utilities within the Mokelumne River  
31 watershed to meet current and projected future water requirements  
32 through the development of new and more reliable water supplies  
33 from the Mokelumne River and its tributaries. When considering  
34 projected future water requirements, the secretary shall only  
35 consider feasible projects to meet foreseeable demands.

36     (2) Any effects of climate change on river values described in  
37 Section 5093.50 and current and projected water supplies.

(3) The following feasibility studies and assessments included within the implementation plan of the Mokelumne Watershed Interregional Sustainability Evaluation, Final Report dated June 12, 2015: 7a, 7b, 7d, and 7f. The inclusion of these studies and assessments in this subdivision shall not be construed as an exemption from wild and scenic designation.

(4) The instances when the secretary has determined pursuant to Section 5093.55 that a water diversion facility may be constructed on a river or segment of a river that is part of the system.

(5) The instances when the State Water Resources Control Board has approved an application to appropriate water from a river or a segment of a river that is part of the system and what restrictions, if any, were placed on the appropriation of water as a result of the river or segment of a river's inclusion in the system.

(b) The report shall also include the information required in subdivision (b) of Section 5093.547 and the secretary's recommendations and proposals with respect to the proposed designation.

(c) The report required for the ~~portion segments~~ of the Mokelumne River designated for potential addition to the system pursuant to Section 5093.549 shall be submitted to the Legislature and Governor no later than December 31, 2017, and shall include a clear recommendation on the suitability or nonsuitability for addition to the system of *each of the designated portion segments* of the Mokelumne River ~~or any segment of that portion.~~ *River.*

(d) A study undertaken by the secretary pursuant to subdivision (a) shall provide for public input from a broad range of stakeholders.

(e) A report required to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(f) Until the completion of the study period and the implementation of any recommendation to add segments to the system, or December 31, 2021, whichever occurs first, no dam, reservoir, diversion, or other water impoundment facility may be constructed on any segment designated for study by the secretary as a potential addition to the system unless the secretary determines that the facility is needed to supply domestic water to the residents of the county or counties through which the river and segment

1 flows and the secretary determines that the facility will not  
2 adversely affect the free-flowing condition and natural character  
3 of the river and segment. This subdivision shall not apply to, and  
4 shall not in any way affect, Amador Water Agency's water rights  
5 application 5647X03 pending before the State Water Resources  
6 Control Board.

7 (g) (1) The secretary shall develop a cost estimate of the study  
8 and report required by subdivision (c) and enter into a cost-sharing  
9 agreement with the Upper Mokelumne River Watershed Authority.  
10 The cost-sharing agreement shall require that the state pay not  
11 more than 50 percent of the cost of the study and report required  
12 by subdivision (c), with the remaining cost to be paid by the  
13 authority. The payment by the authority may consist of  
14 appropriated funds or a contribution of services.

15 (2) Nothing in this section shall preclude any private donations  
16 or contributions from interested parties to be used for the purposes  
17 of this subdivision.

18 SEC. 3. Section 5093.549 is added to the Public Resources  
19 Code, to read:

20 5093.549. ~~The portion of the Mokelumne River, or any segment~~  
21 ~~of that portion, located from one-half mile downstream of the Salt~~  
22 ~~Springs 97-066 Dam to the upper extent of the Pardee Reservoir~~  
23 ~~at the elevation of not less than 580 feet above mean sea level is~~  
24 ~~following segments of the North Fork and main stem Mokelumne~~  
25 ~~River are hereby designated for potential addition to the system.~~

26 (a) *The North Fork Mokelumne River from 0.50 miles*  
27 *downstream of the Salt Springs 97-006 Dam to 0.50 miles upstream*  
28 *of the Tiger Creek Powerhouse.*

29 (b) *The North Fork Mokelumne River from 1,000 feet*  
30 *downstream of the Tiger Creek Afterbay 97-105 Dam to State*  
31 *Highway Route 26.*

32 (c) *The North Fork Mokelumne River from 400 feet downstream*  
33 *of the small reregulating dam at the outlet of the West Point*  
34 *Powerhouse to the confluence of the North and Middle Forks of*  
35 *the Mokelumne River.*

36 (d) *The main stem of the Mokelumne River from the confluence*  
37 *of the North and Middle Forks to 300 feet upstream of the Electra*  
38 *Powerhouse.*

39 (e) *The main stem of the Mokelumne River from 300 feet*  
40 *downstream of the small reregulating dam downstream of the*

1 *Electra Powerhouse to the Pardee Reservoir flood surcharge pool*  
2 *at 580 feet elevation above mean sea level.*

3 SEC. 4. Section 5093.56 of the Public Resources Code is  
4 amended to read:

5 5093.56. No department or agency of the state may assist or  
6 cooperate, whether by loan, grant, license, or otherwise, with any  
7 department or agency of the federal, state, or local government,  
8 in the planning or construction of a dam, reservoir, diversion, or  
9 other water impoundment facility that could have an adverse effect  
10 on the free-flowing condition and natural character of either of the  
11 following:

12 (a) The rivers and segments thereof designated in Section  
13 5093.54 as included in the system.

14 (b) ~~The portion segments~~ of the Mokelumne River designated  
15 in Section 5093.549 for study by the secretary as ~~a potential~~  
16 ~~addition~~ additions to the system until after the study period and  
17 implementation of any recommendations have been completed,  
18 or December 31, 2021, whichever occurs first. This subdivision  
19 shall not apply to, and shall not in any way affect, Amador Water  
20 Agency's water rights application 5647X03 pending before the  
21 State Water Resources Control ~~Board. Board, or prejudice, alter,~~  
22 ~~affect in any way, or interfere with the maintenance, repair, or~~  
23 ~~operation by the Pacific Gas and Electric Company of the~~  
24 ~~Mokelumne River Project (FERC 137) currently under the 2001~~  
25 ~~Federal Energy Regulatory Commission license for the project,~~  
26 ~~the incorporated settlement agreement, any license amendments~~  
27 ~~made with the agreement of the parties to the incorporated~~  
28 ~~settlement agreement, and any adjustment of flows permitted to~~  
29 ~~occur pursuant to the license for enhancement of ecological~~  
30 ~~resources.~~

31 SEC. 5. Due to the unique geographical features of the  
32 Mokelumne River and its tributaries, the Legislature hereby finds  
33 and declares that a special law is necessary and a general law  
34 cannot be made applicable within the meaning of Section 16 of  
35 Article IV of the California Constitution.

36 SEC. 6. No reimbursement is required by this act pursuant to  
37 Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district are the result of a program for which legislative authority  
40 was requested by that local agency or school district, within the

- 1 meaning of Section 17556 of the Government Code and Section
- 2 6 of Article XIII B of the California Constitution.

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